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Tribute to Professor Paul Giannelli

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PAUL GIANNELLI: SCHOLAR, COLLEAGUE, AND FRIEND

Dale Nance[†]

I entered law teaching two years after Paul had published his seminal 1980 article on the *Frye* test for the admissibility of scientific evidence.¹ Though Evidence was also my chosen specialty, scientific evidence was less my interest than the historical development and philosophical presuppositions of our evidence rules in general. Indeed, the first article by Paul that I read as a young scholar was not on scientific evidence; it was a masterful piece that he published on the seemingly mundane, but theoretically fascinating, subject of authentication of tangible evidence.² That article was one of the more important influences helping me to formulate my approach not only to authentication, but also to the troubling problem of conditional relevance.

Later, I read his article on *Frye*. In it, I found a thorough and convincing critique of the prevailing doctrine governing admissibility of scientific evidence, but I did not anticipate just how influential his commentary would be. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,³ decided in 1993, settled that question in one fell swoop. His important role in generating that decision is well known.⁴ Meanwhile, Paul's suggestion that the *Frye* test should not survive the adoption of the Federal Rules of Evidence helped motivate my own search for a viable alternative, which I stated only years later in the wake of *Daubert*.

Until 2002, I had known Paul almost entirely as a scholar, one whose prolific output established him as a dominant voice in our field. But after joining the Case Western Reserve faculty in that year, I quickly came to realize Paul's importance as a colleague. Simply put, Paul has been a steadfast voice supporting the highest quality scholarship, teaching, and public service. The importance of that to a law faculty can hardly be overestimated, especially in an era of growing emphasis on marketing activities, of law school rankings that are more influential among external audiences than they ought to be, and, most recently, of

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1. Paul C. Giannelli, *The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half-Century Later*, 80 COLUM. L. REV. 1197 (1980).
2. Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527 (1983).
3. 509 U.S. 579 (1993).
4. Paul has penned his own account of the *Daubert* litigation in an essay well worth reading. See Paul Giannelli, *The Daubert Trilogy and the Law of Expert Testimony*, in EVIDENCE STORIES 181 (Richard Lempert ed., 2006).

the financial stress associated with a dramatically contracted law school applicant pool. The steadiness and sound judgment of people like Paul are what gets us through such institutional angst.

Of course, I have also found in Paul a thoughtful and insightful collaborator on all things evidence related. Countless times I have asked him to reflect on some obscure point of law or practice that seemed to me to be of importance. Paul, who describes himself as a “muller”—as in, “I have to mull things over awhile”—never failed to provide me with useful insights. My scholarship is certainly the better for having had an office next to his. And then, of course, there are his voluminous writings. Particularly in the area of expert testimony, whenever I needed to orient myself on a topic, Paul’s treatise would be the place I would go.⁵

Few scholars can hope to achieve as much as Paul has in terms of influencing the development of the law. In particular, his work demystifying forensic science, articulating the diverse ways that reports by witnesses wielding such purported expertise can go wrong, has been matched by his voluminous contributions about how to improve such disciplines and the litigation system that puts such disciplines to use. Paul has taken a laudably comprehensive look at these problems, dealing not only with admissibility doctrines,⁶ but also with topics as diverse as the defects in pretrial discovery,⁷ the institutional incentives created by close alignment of forensics labs with the police and prosecutors, and the inadequacy of oversight regarding the competence and objectivity of lab work.⁸ His work has generated high-profile reform proposals, in which he has taken an active part.⁹ For this, and his many other contributions, the profession and the nation owe him a huge debt.

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5. The first edition was co-authored by Ed Imwinkelried. *See* PAUL C. GIANNELLI & EDWARD J. IMWINKELRIED, *SCIENTIFIC EVIDENCE* (1st ed. 1986). The latest edition is the fifth. *See* PAUL C. GIANNELLI ET AL., *SCIENTIFIC EVIDENCE* (5th ed. 2012).
 6. *See, e.g.*, Paul C. Giannelli, *The Admissibility of Laboratory Reports in Criminal Trials: The Reliability of Scientific Proof*, 49 OHIO ST. L.J. 671 (1988); Paul C. Giannelli, “Junk Science”: *The Criminal Cases*, 84 J. CRIM. L. & CRIMINOLOGY 105 (1993); Paul C. Giannelli, *Confrontation, Experts, and Rule 703*, 20 J.L. & POL’Y 443 (2012).
 7. *See, e.g.*, Paul C. Giannelli, *Criminal Discovery, Scientific Evidence, and DNA*, 44 VAND. L. REV. 791, 798–800 (1991); Paul C. Giannelli, *Ake v. Oklahoma: The Right to Expert Assistance in a Post-Daubert, Post-DNA World*, 89 CORNELL L. REV. 1305, 1381, 1417–18, 1417–18 nn.708–13 (2004).
 8. *See, e.g.*, Paul C. Giannelli, *The Abuse of Scientific Evidence in Criminal Cases: The Need for Independent Crime Laboratories*, 4 VA. J. SOC. POL’Y & L. 439 (1997); Ryan M. Goldstein, Note, *Improving Forensic Science Through State Oversight*, 90 TEX. L. REV. 225 (2011).
 9. *See, e.g.*, NAT’L RESEARCH COUNCIL, NAT’L ACADS. PRESS, *STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD* (2009).

My debt is also more personal. Out of our collaborations has emerged a true friendship. How many people, after all, will travel 1,300 miles to attend a colleague's wedding? My wife, Melani, and I were so delighted that Paul and his wonderful wife, Sue, would make that journey from Cleveland to Houston. And later, when Melani and I had our first private dinner with Paul and Sue, Melani got to experience Paul's engaging wit first-hand. I remember Paul and Sue describing their early years together, when Paul was in the army. Suddenly, Paul announced, with mock frustration, how his army career would have taken a much different path if only Sue had worn the white gloves expected of dutiful wives at officers' functions. Melani and I still laugh about the great white gloves *faux pas*. Others in this issue have commented on Paul's dry sense of humor. One of his endearing qualities is the fun he has at his own expense. At a recent lunch with three colleagues and friends, Paul encountered a serious comment about how lucky he was to have had a long marriage with a wife who still loves him. Without missing a beat, and with initial dead pan seriousness, Paul responded, "You have no idea how hard it was for me to find a woman with such bad judgment."

Perhaps I have bad judgment, too, but I could not have asked for a better colleague or a better friend than Paul Giannelli.